

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THE AMERICAN OUTDOORSMAN, INC.,)	
)	
Plaintiff,)	
)	Civil Action No. 13-443
vs.)	Chief Magistrate Judge Maureen P. Kelly
)	
SHADOW BEVERAGES AND)	Re: ECF No. 95
SNACKS, LLC,)	
Defendant.)	

MEMORANDUM ORDER

On September 23, 2014, this Court issued an Order directing Plaintiff and Defendant to each bear one-third of the expenses, or \$4,041.66, incurred by expert witness Andrea Hein in connection with her preparation and attendance at a deposition in Los Angeles, California, on February 18, 2014. ECF No. 94. Ms. Hein was to bear the remaining one-third of her expenses. Id. In addition, Defendant was to reimburse Ms. Hein \$6000.00 in expenses for the taking of the deposition, and \$154.55 for miscellaneous expenses for a total of \$10,196.21. The Court also directed Plaintiff and Defendant to make the ordered payments to Ms. Hein on or before September 30, 2014. Id.

On November 7, 2014, Plaintiff filed a Motion to Hold Defendant Shadow Beverages and Snacks, LLC in Contempt for Failing to Comply with the Court's September 23, 2014 Order Compelling Payment to Andrea Hein ("the Motion"). ECF No. 95. Plaintiff argues therein that, despite numerous attempts to communicate with Defendant and efforts to obtain the payment on Ms. Hein's behalf, no payments had been forth coming as of November 7, 2014 -- the date the Motion was filed. Id. Plaintiff asks the Court to not only find Defendant in contempt under Fed.

R. Civ. P. 70, but to compel immediate payment to Ms. Hein, and impose sanctions as well as attorney's fees and costs associated with the preparation and filing of the Motion. Defendant filed a Response to the Motion on November 13, 2014, ECF No. 98, in which it indicated that it did not intentionally seek to disregard this Court's Order but was financially unable to compensate Ms. Hein in the time frame set forth by the Court. Id. Defendant also indicated that it had since wired the money it owed to Ms. Hein and that Ms. Hein has received the wire transfer. Id. On November 14, 2014, Plaintiff filed a Reply to Defendant's Response to the Motion, ECF No. 99, confirming that the wire transfer to Ms. Hein in the amount of \$10,196.21 had been completed and withdrawing its request for sanctions. Plaintiff, however, continues to seek reimbursement in the amount of \$2500.00 for the attorney's fees and costs it incurred in securing payment for Ms. Hein including the costs relative to preparing the Motion and the Reply. Id.

Notwithstanding Defendant's apparent financial difficulties, it was still obligated by Court Order to reimburse Ms. Hein by September 30, 2014. The better course therefore would have been to file a motion with the Court seeking additional time within which to make the payment. Nevertheless, Plaintiff has withdrawn its request for sanctions and the Court therefore declines to impose any sanctions other than to reimburse Plaintiff for attorney's fees and costs associated with securing payment for Ms. Hein and filing the instant Motion. See Wedgewood Village Pharmacy, Inc. v. United States, 421 F.3d 263, 268 (3d Cir. 2005) ("penalties for civil contempt are limited to measures to . . . compensate the opposing party for losses sustained as a result of the noncompliance"); Robin Woods, Inc. v. Woods, 28 F.3d 396, 400 (3d Cir. 1994) (an award of attorney's fees is appropriate for civil contempt). Although Plaintiff seeks \$2500.00 in

attorney's fees and costs, Plaintiff has not provided the Court with any documentation to justify its request. Accordingly, the following Order is entered:

AND NOW, this 2nd day of December, 2013, upon consideration of Plaintiff's Motion to Hold Defendant Shadow Beverages and Snacks, LLC in Contempt for Failing to Comply with the Court's September 23, 2014 Order Compelling Payment to Andrea Hein, Defendant's Response thereto and Plaintiff's Reply, IT IS HEREBY ORDERED that the Motion, ECF No. 95, is granted in part and denied in part. The Motion is denied insofar as Plaintiff seeks to hold Defendant in contempt and to have sanctions imposed; the Motion is granted insofar as Plaintiff seeks reimbursement of the attorney's fees and costs incurred in securing payment for Ms. Hein, including the preparation and filing of the instant Motion and Reply.

IT IS FURTHER ORDERED that on or before December 12, 2014, Plaintiff shall submit any documentation in support of its request for the reimbursement of a specific amount of attorney's fees and costs, along with a proposed order awarding the amount of documented attorney's fees and costs. If Defendant wishes to file a response to Plaintiff's request for attorney's fees and costs, it shall do so on or before December 23, 2014.

BY THE COURT:

/s/ Maureen P. Kelly
MAUREEN P. KELLY
CHIEF UNITED STATES MAGISTRATE JUDGE

cc: All counsel of record by Notice of Electronic Filing